UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ROBERT W. KNAAK, Appellant, v. WELLS FARGO BANK N.A., Appellee.	1:19-cv-00522-NLH **OPINION**

ROBERT W. KNAAK, Appellant, v. WELLS FARGO BANK N.A., Appellee.	1:19-cv-05523-NLH

APPEARANCES:

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On behalf of Appellee Wells Fargo Bank N.A.

HILLMAN, District Judge

Appellant Robert W. Knaak appeals the Bankruptcy Court's dismissal of his two adversary proceedings, Adv. Pro. No. 18-1533-ABA and Adv. Pro. No. 18-1617-ABA.[1] Appellee Wells Fargo Bank N.A. has not filed a response to Knaak's appeals. For the reasons expressed below, the decisions of the Bankruptcy Court will be affirmed, and Knaak's appeals will be dismissed.

BACKGROUND

Knaak filed his first adversary proceeding, Adv. Pro. No. 18-1533-ABA, on October 22, 2018. On December 10, 2018, the Bankruptcy Court dismissed Knaak's first adversary proceeding. In its Opinion, the Bankruptcy Court set forth Knaak's claims:

> In his complaint, Mr. Knaak complains about irregularities with defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") proof of claim ("Claim #2") that he claims eliminates its legal standing and right to file any pleadings in this court in this case. Doc. No. 1 (the "Complaint") at ¶ 7. First, Mr. Knaak alleges that though Wells Fargo checked that the claim was not acquired from someone else, it was in fact acquired from Wachovia Bank, N.A. when Wells Fargo acquired Wachovia. Second, he complains that the proof of claim asserts an unsecured claim, when he believes it is secured. Third, he complains that Christopher Ford, who filed the proof of claim, is an attorney rather than an individual with authority as an officer of Wells Fargo. Mr. Knaak asks that this court strike the alleged secured creditor and its proof of claim, and enter an order prohibiting Mr.

[1] Knaak appeared *pro se* in the Bankruptcy Court for both adversary proceedings, and he is appearing *pro se* here in both of his appeals.

Ford from certifying documents for his clients and to report Mr. Ford to the New Jersey Bar and American Bar Association or any other sanctions or orders as the court deems just and proper.

(Adv. Pro. No. 18-1533-ABA, Docket No. 13 at 1.)

The Bankruptcy Court rejected each of Knaak's arguments:

1. The "Acquired Form" Argument:

Wells Fargo has standing in this case and any failure to accurately complete Part 1.2 of its proof of claim, if even necessary, would not warrant disallowance of its claim. Mr. Knaak is fully aware of this creditor and continues to do business with it. The allegations in the Complaint as to this issue are unfounded and unsupported by the facts and law and the Complaint must be dismissed with regard thereto. (Id. at 3.)

2. The "Unsecured Claim" Argument:

Wells Fargo has standing in this case to assert an unsecured proof of claim as the claim is not secured by any property owned by Mr. Knaak individually. Whether the obligation is or is not in default or is disputed is of no import. The Bankruptcy Code's broad definition of the term "claim" encompasses Wells Fargo's claim in this case. Mr. Knaak's misplaced argument cannot result in a disallowance of its claim. The allegations in the Complaint as to this issue are unfounded and unsupported by the facts and law and the Complaint must be dismissed with regard thereto. (Id. at 4.)

3. The Christopher Ford Argument:

In addition, as with his other allegations, this one is not sufficient to negate the *prima facie* validity of the filed claim. As the check boxes in Part 3 of the Proof of Claim suggest, a creditor, its attorney or its authorized agent may file a proof of claim on behalf of a creditor. It does not matter whether Mr. Ford is the creditor's attorney or its authorized agent--either can file the proof of claim for Wells Fargo. Thus, in addition, reporting Mr. Ford to any ethics panel is not

> appropriate and dismissal of the Complaint as it pertains to these allegations is warranted. (Id. at 5.)

The Bankruptcy Court concluded that Knaak failed to assert any cognizable claims and it granted Wells Fargo's motion to dismiss his adversary complaint. The Bankruptcy Court further ordered:

> [T]he court notes that Wells Fargo's unsecured claim in the amount of $686,411 puts Mr. Knaak over the debt limit for filing a chapter 13 case. Only an individual owing less than $394,725 in noncontingent, liquidated, unsecured debts may be a debtor under chapter 13. 11 U.S.C. § 109(e). Mr. Knaak will be afforded 14 days to convert his case to another chapter for which he is eligible, else the court will dismiss his case as he is ineligible to proceed under chapter 13.

(Id.)

On December 17, 2018, Knaak filed a motion for reconsideration. (Adv. Pro. No. 18-1533-ABA, Docket No. 16.) On that same day, Knaak filed an appeal of the Bankruptcy Court's decision in this Court, Civil Action No. 19-522.

On January 7, 2019, the Bankruptcy Court denied Knaak's motion for reconsideration. (Adv. Pro. No. 18-1533-ABA, Docket No. 28.) The Bankruptcy Court noted that in dismissing the adversary proceeding, it refused to consider Knaak's objection that was filed on the same day as the hearing because it was not filed and served no later than four days before the hearing date, as required by the Bankruptcy

Court's rules. (Id. at 2.) The Bankruptcy Court also noted that in any event, Knaak was able to voice his arguments at the hearing. (Id.)

The Bankruptcy Court also addressed Knaak's argument related to the Bankruptcy Court's intention to dismiss or convert his Chapter 13 case (Case No. 18-24064-ABA) because he was ineligible under Chapter 13. The Bankruptcy Court noted that Knaak had opposed that path in his Chapter 13 case, which was the proper forum for mounting such a challenge. The Bankruptcy Court also noted that the issue was not yet ripe because an Order to Show Cause had not yet been entered. (Id. at 2.)

Finally, the Bankruptcy Court found that Knaak's filing of an appeal in this Court divested it of jurisdiction to consider his motion for reconsideration. (Id. at 3.)

Knaak filed a second adversary proceeding Adv. Pro. No. 18-1617-ABA on December 4, 2018, six days before the Bankruptcy Court dismissed his first adversary proceeding. Wells Fargo moved to dismiss the second adversary complaint. (Adv. Pro. No. 18-1617-ABA, Docket No. 4.) The Bankruptcy Court held a hearing on January 29, 2019 (id. at 11),[2] and

[2] This Court has listened to the audio transcript of the January 29, 2019 hearing.

dismissed Knaak's second adversary complaint on February 1, 2019 (id. at 14).

The Bankruptcy Court found, in relevant part:

> In his latest challenge to its claim, Mr. Knaak states that this is an action of legal standing; complains that the copy of the Note that he possesses has a maturity date of December 18, 2014 while the copy filed in court by Wells Fargo shows December 18, 2017; and complains that the loan documents show an amortization schedule that ends in December 2012. He argues that the "uncertainty of the Maturity Date" "nullifies and voids the Note *ab initio* or when it was executed." . . .
>
> It is important to note that in his Response, Mr. Knaak repeats the same argument that uncertainty of the maturity date renders the Note void *ah initio* - an issue previously decided by this court when raised by him in connection with his "Motion to Compel Wells Fargo Bank to Not Destroy, Alter In Any Way Notes and Stay Adv. Proceeding 18-1533." Indeed, in the complaint here, Mr. Knaak alleged the same facts as in his Motion to Compel. In fact, paragraphs four though 28 of Mr. Knaak's complaint are identical to paragraphs one through 25 of the Motion to Compel. Mr. Knaak also again provided an unexecuted Note as disclosing the 2014 maturity date, as well as the letter from Wells Fargo explaining all of what Mr. Knaak sees as anomalies in the loan transaction, including the amortization schedule.
>
> The court rejected Mr. Knaak's argument in his Motion to Compel, and the Order regarding that decision has become final . . . [I]n in denying the Motion to Compel, the court explained that the Note reflects that on December 18, 2007 the Knaak Family Trust LLC entered into a 10-year loan based on a 20-year amortization schedule. A balloon payment at the end of the 10 years would pay the remaining amount due. The applicable interest rate was agreed to be hedged for the first five years of the loan--thus explaining the amortization schedule that ends in December 2012--and thereafter would be at the variable rate set forth in the Note. That variable rate is why there is no amortization schedule

> for the second five years of the loan: it could not be known in advance what interest rate would be charged each month. Mr. Knaak and his wife, Sarah, that same day signed an Unconditional Guaranty of the Note, under which they are jointly and severally liable for the amount owed. As explained by this court in its Memorandum Decision denying Mr. Knaak's Motion for Reconsideration, dated January 15, 2019 (Doc. No. 83 in the main case), this means that Wells Fargo has a claim of $686,411.37 that it can collect in full from either Mr. Knaak or his wife. The court's order with regard thereto is a final order.

(Adv. Pro. No. 18-1617-ABA, Docket No. 13 at 1-3.)

The Bankruptcy Court dismissed Knaak's second adversary complaint because it rejected Knaak's argument that the maturity date was uncertain, finding that it was clearly December 18, 2017. The Bankruptcy Court also dismissed the second adversary complaint under the doctrine of res judicata. (Id. at 3.) Knaak's notice of appeal was docketed in this Court on February 13, 2019, in Civil Action 19-5523.

DISCUSSION

A. Jurisdiction and Standard of Review

This Court has jurisdiction over the appeal from the Bankruptcy Court's orders pursuant to 28 U.S.C. § 158(a), which provides in relevant part: "The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders and decrees . . . of bankruptcy judges entered in cases and proceedings referred to the

bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving."

In reviewing a determination of the Bankruptcy Court, the district court subjects the bankruptcy court's legal determinations to plenary review, reviewing its factual findings for clear error, and considering its exercise of discretion for abuse thereof. In re United Healthcare Sys., Inc., 396 F.3d 247, 249 (3d Cir. 2005).

B. Analysis

In his appeals, Knaak challenges the Bankruptcy Court's findings regarding his "acquired form" argument, the "unsecured claim" argument, the Christopher Ford argument, and the "uncertain maturity date" argument. Knaak advances truncated versions of the same arguments here that he asserted in his adversary proceedings.[3] Other than disagreeing with the Bankruptcy Court's findings on these issues, Knaak fails, however, to cite to any legal authority to support his renewed arguments or otherwise show that the Bankruptcy Court erred on

[3] The majority of Knaak's submissions to support his appeals are copies of allegations and documents filed in his two adversary proceedings.

its consideration of the facts or the law. See, e.g., In re Smith, 757 F. App'x 77, 82 (3d Cir. 2018) (affirming the denial of the appellant's bankruptcy appeal because "she has shown nothing more than disagreement with their rulings").

More specifically, Knaak challenges the Bankruptcy Court's January 7, 2019 decision on his motion for reconsideration in his first adversary proceeding because it was issued prior to the January 15, 2019 scheduled hearing date. Knaak does not cite to a procedural rule or any legal authority to support his contention that the Bankruptcy Court was not permitted to issue a decision on a fully briefed motion prior to a scheduled hearing date.

Moreover, Knaak had filed his motion for reconsideration of the Bankruptcy Court's December 10, 2018 order dismissing his first adversary complaint on December 17, 2018, which is the same day as he filed his appeal to this Court. The Bankruptcy Court noted this procedural history in its order denying Knaak's motion for reconsideration, and stated that Knaak's appeal to the district court on the same issues divested it of jurisdiction to consider any of those issues appealed. (Adv. Pro. No. 18-1533-ABA, Docket No. 28 at 3.) Thus, because the Bankruptcy Court did not have jurisdiction to consider Knaak's arguments on reconsideration, it was not

error to deny Knaak's motion without proceeding with oral argument on it.

Knaak further contends that the Bankruptcy Court improperly applied the doctrine of res judicata in dismissing his second adversary complaint.[4] Knaak argues that the Bankruptcy Court improperly dismissed his second adversary complaint based on the mistaken finding that it raised the same issues as his first adversary complaint. That argument is without merit because the Bankruptcy Court did not find that Knaak's second adversary complaint was duplicative of his first. Instead, the Bankruptcy Court noted that the maturity date issue was a new argument advanced in the second adversary

[4] Res judicata encompasses claim and issue preclusion. U.S. v. 5 Unlabeled Boxes, 572 F.3d 169, 174 (3d Cir. 2009) (quoting Venuto v. Witco Corp., 117 F.3d 754, 758 n.5 (3d Cir. 1997) ("Collateral estoppel customarily refers to issue preclusion, while res judicata, when used narrowly, refers to claim preclusion. This court has previously noted that 'the preferred usage' of the term res judicata 'encompasses both claim and issue preclusion.'"). Claim preclusion requires a showing that there has been (1) a final judgment on the merits in a prior suit involving (2) the same claim and (3) the same parties or their privies. Id. (citation omitted). Collateral estoppel requires of a previous determination that (1) the identical issue was previously adjudicated; (2) the issue was actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from relitigating the issue was fully represented in the prior action. Id. (citation omitted).

complaint, and it found that it had already addressed that issue when it resolved Knaak's motion to compel in his main bankruptcy case. (Adv. Pro. No. 18-1617-ABA, Docket No. 13 at 3.) Thus, the Bankruptcy Court applied res judicata to arguments raised in the second adversary complaint that were previously addressed in the main bankruptcy case, not in the earlier adversary complaint. The Court does not find any error on this issue.[5]

Finally, Knaak argues that the Bankruptcy Court applied "Equity instead of Law as it is required for Judges," and that it was biased. Knaak provides no evidence other than his own dissatisfaction with the Bankruptcy Court's decisions to support that contention. See, e.g., In re Smith, 757 F. App'x at 82 ("Smith also argues that the Bankruptcy Judge (and now the District Judge) were biased against her, but she has shown

[5] The Bankruptcy Court also "question[ed] why the issues raised in Mr. Knaak's latest complaint were not raised in Mr. Knaak's previously dismissed adversary proceeding against Wells Fargo-Adv. Pro. 18-1533-ABA." (Adv. Pro. No. 18-1617-ABA, Docket No. 13 1 n.1.) This constitutes a separate basis to dismiss Plaintiff's adversary complaint under res judicata. See In re Banks, 223 F. App'x 142, 146 (3d Cir. 2007) (finding that because the debtor failed to raise his claims in a prior proceeding, the debtor could not litigate them in his adversary complaint), citing CoreStates Bank, N.A. v. Huls Am., Inc., 176 F.3d 187, 194 (3d Cir. 1999) ("Res judicata 'gives dispositive effect to a prior judgment if a prior issue, although not litigated, could have been raised in the earlier proceeding.'").

nothing more than disagreement with their rulings and neither those rulings nor anything else of record suggests 'a deep-seated favoritism or antagonism that would make fair judgment impossible.'" (quoting Liteky v. United States, 510 U.S. 540, 555 (1994)); In re Walters, 649 F. App'x 273, 275 (3d Cir. 2016) (affirming the district court's dismissal of the debtor's bankruptcy appeal when it found "[a] losing streak, without more, is not suggestive of bias; it ordinarily reflects nothing more or less than the judge's view of the merits," and "[t]he facts ... do not raise any reasonable inference of bias").

CONCLUSION

For the reasons expressed above, the Bankruptcy Court did not err in dismissing Knaak's two adversary complaints. The orders of the Bankruptcy Court will be affirmed, and Knaak's appeals dismissed. An appropriate Order will be entered.

Date: December 18, 2019
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.